IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 88 of 2000

to

CRIMINAL REVISION APPLICATION No 92 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRABHAI T KAPADIA

Versus

PRITESH DAHYABHAI RATHOD

Appearance:

1. Criminal Revision Application No. 88 of 2000

MS VANDANA L BHATT for Petitioner No. 1

MR RAJESH K KANANI for Respondent No. 1

MR BD DESAI, APP for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 27/03/2002

ORAL COMMON JUDGEMENT

1. Heard ld. counsel Ms. Vandana Bhatt for the petitioner, ld. counsel Mr. Rajesh Kanani for Respondent No. 1, and ld. APP Mr. B.D.Desai for Respondent No.2 State in all the matters.

2. On the strength of the complaint filed by the petitioner- original complainant, proceedings under Section 107 of CrPC were initiated by the Executive Magistrate, Metropolitan Area, Court No.2., Ahmedabad against the respondent No.1. In all five cases were registered by the ld. Executive Magistrate against the family members on account of some matrimonial dispute between husband Pritesh, S/o Dahyabhai Devji Rathod and wife Padmaben. It seems that some matrimonial disputes between them have cropped up in the year 1997. Because of the dispute, a criminal complaint being CR.No. I. 0003/99 came to be registered against (i) Dahyabhai Devjibhai Rathod, (ii) Sumanben, w/o Dahyabhai Devjibhai, (iii) Kaushikkumar Dahyabhai, and (iv) Priteshbhai Dahyabhai, with Saher Kotda Police Station, for the offence punishable under Sections 324, 452, 323, 294(B), 114 of Indian Penal Code and Section 135 of Bombay Police Act. The incident has occurred on 2.1.1999. After investigation, police filed chargesheet against all the four accused vide chargesheet No. 49/99 on 16.2.1999. Zerox copy of the chargesheet is available on record in each Cri.Rev. Application. Because of the criminal complaint, by way of abundant caution, P.I., Saher Kotda Police Station prepared papers for initiating proceedings under Section 107 of CrPC on 2.1.1999 i.e. the day on which FIR was registered.

3. It is submitted by ld. counsel Ms. Vandana Bhatt for the petitioner that on receipt of the report from Saher Kotda Police station, ld. Executive Magistrate initiated proceedings under Section 107 of CrPC against aforesaid four accused and issued notice under Section 111 CrPC. It is further submitted that an act of issuance of notice indicates that ld. Executive Magistrate, prima facie, was satisfied that the report of Saher Kotda Police Station has some substance and needs to be inquired into as stipulated under Section 116 of CrPC. That ld. Ex. Magistrate has erred in dropping the proceedings, that order passed by ld. Executive Magistrate is non-speaking and cryptic order and the same is passed without considering the scheme of Sections 111 & 116 of CrPC.

4. On the other hand, ld. counsel Mr. kanani for respondent No.1 and ld. APP Mr. B.D.Desai for respondent No.2 State have supported the impugned order.

5. Copy of the case proceeding is on record. It is pertinent to note that after initiation of proceedings under Section 107 R/w Section 111 of CrPC, the first returnable date, i.e. date of appearance, was of 23.2.1999. On that day, ld. Executive Magistrate was on leave and proceedings were, therefore, adjourned to 8.4.1999. On 8.4.1999, as all opponents were not present, proceedings were adjourned to 29.5.1999. On 29.5.1999 and 20.7.1999, ld. Executive Magistrate was on leave. On 20.8.1999 i.e. next adjourned date, witnesses were not present and so opponents were asked to come with surety. Just to accommodate the complainant side, matter was adjourned to 14.10.1999. As the sureties were not brought, the matter was adjourned to 21.10.1999. On 21.10.1999, nobody was present on the complainant side and it is recorded by the ld. Executive Magistrate that witnesses are not present. It seems that, considering the scheme of Section 116 of CrPC and especially sub-sec.(6) of Section 116 of CrPC and the fact that the original complainant and opponents of the case are residing in different area- locality, there was no scope of breach of piece as apprehended, the ld. Magistrate, vide impugned order dated 21.10.1999 dropped the proceedings. It is nothing on record from which it can be inferred that any untoward incident had occurred between 1.1.1999 and 21.10.1999 the day on which proceedings were terminated. It emerges from the impugned order itself that the ld. Executive Magistrate terminated the proceedings against the petitioner on two counts, viz.

(i) for six months, no positive finding was recorded as inquiry has not been concluded;

(ii) there was no scope for breach of piece as parties are staying in different locality;

6. The mere fact of filing of one or more criminal cases between the parties, normally would not give rise to initiation of such proceedings. The criminal case between the parties i.e. original complainant and the opponents of the proceedings, undisputely, is the result of matrimonial dispute between husband and wife viz. Pritesh and Padmaben. State of Gujarat has not preferred any Criminal Revision Application against the impugned order terminating the proceedings against the petitioners, but the original complainant has preferred these Criminal Revision Applications against the impugned order. However, without going into the issue of "locus" of the present petitioner, I am of the view that there is no patent illegality or perversity in the impugned order

passed by the ld. Executive Magistrate. The order reveals correct set of facts available on record and in view of statutory embargo provided under sub-sec.(6) of Section 116 of CrPC, ld. Executive Magistrate has passed the impugned order. Hence, the argument of ld. counsel Ms. Vandana Bhatt for the petitioner that under Sec.111(2) of CrPC, ld. Executive Magistrate is bound to conclude the inquiry with a positive or negative finding and pass reasoned order, is not worth acceptable. Hence, her further argument that this is a fit case that matter should be remanded to the ld. Executive Magistrate for concluding inquiry, is also not acceptable. Even if for the sake of argument the prayer to remand the matter is accepted, the ld. Executive Magistrate, on the very first day of hearing, would be empowered to terminate the proceedings in view of embargo stipulated under sub-sec.(6) of Section 116 of CrPC and whole exercise would be in futility. This court is also not in agreement with the submission of ld. counsel Ms. Bhatt for the petitioner that the impugned order is non-speaking and cryptic one and finding recorded by ld. Executive Magistrate is unjust and incorrect. Merely because, the order is of one line, it would not be legal to infer that it is non-speaking or cryptic order. One line order can convey the correct cause or reason for disposal. One line order should be looked in to in reference to relevant statutory provisions. It is also not necessary to refer to number of chapter cases filed earlier and disposal thereof and other proceedings between the parties on account of very matrimonial disputes. Scope of proceedings under Section 107 of CrPC is very limited. Undisputedly, these proceedings are preventive in nature, but filing of criminal case would not on each occasion warrant initiation of such proceedings. On the contrary, in the instant case, this Court is of the view that ld. Executive Magistrate, ought to have refused to issue notice under Section 111 of CrPC as such proceedings could not have been initiated in present set of circumstances.

7. In short, there is no substance in any of the Criminal Revision Applications and the same are required to be dismissed. Hence, all these Criminal Revision Applications are hereby dismissed. Rule is discharged in each application.

27.3.2002 [C.K. BUCH, J]
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